

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERIC DWAIN AYERS,

Plaintiff,

v.

CIV 17-0024 MV/JHR

CITY OF ALBUQUERQUE,
BERNALILLO COUNTY, DISTRICT
ATTORNEY'S OFFICE, PUBLIC
DEFENDER'S OFFICE,
METROPOLITAN DETENTION CENTER,

Defendants.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This matter is before the Court *sua sponte*. On August 21, 2017, the Honorable William P. Lynch issued an Order to Show Cause which required Plaintiff to notify the Clerk of this Court of his current address as required by Local Rule 83.6. *See Doc. 4*. This Order was returned to the Court as undeliverable on August 30, 2017. *Doc. 5*. Likewise, notice that this case was reassigned to the undersigned was returned as undeliverable on September 14, 2017. *Doc. 7*. And, to date, Plaintiff has not updated his address of record. Thus, it appears that Plaintiff manifests a lack of interest in litigating this matter.

“A district court undoubtedly has discretion to sanction a party for failing to prosecute . . . a case, or for failing to comply with local or federal procedural rules.” *AdvantEdge Bus. Grp. V. Thomas E. Mestmaker & Assocs.*, 552 F.3d 1233, 1236 (10th Cir. 2009) (internal quotation marks omitted). Specifically, “Federal Rule of Civil Procedure 41(b) authorizes the involuntary dismissal of an action ‘[i]f the plaintiff fails to prosecute or comply with the Federal Rules of Civil Procedure or a court order.’” *Banks v. Katzenmeyer*, 680 F. App’x 721, 724 (10th Cir.

2017) (quoting Fed. R. Civ. P. 41(b)); *see Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) (“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders.”) (citation omitted).

Here, Plaintiff has failed to comply with Judge Lynch’s Order and Local Rule 83.6. Accordingly, the Court recommends that this matter be dismissed without prejudice. *See Banks*, 80 F. App’x at 724 (explaining that if a dismissal is with prejudice, the district court must apply the factors listed in *Ehrenhaus v. Reynolds*, 965 F.2d 916 (10th Cir. 1992), but “if the dismissal is without prejudice, such an analysis is not necessary.”).

Wherefore,

IT IS HEREBY RECOMMENDED that this case be dismissed without prejudice.


UNITED STATES MAGISTRATE JUDGE

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition, they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**